

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Louis N. Marks

DEFENDANTS

SPX Corporation and CUES, Inc.

(b) County of Residence of First Listed Plaintiff Montgomery

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Mecklenburg

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jacqueline Joan Ryan, Esquire, Console Mattiacci Law, LLC
1525 Locust Street, 9th Floor, Philadelphia, PA 19102
215.545.7676

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 U.S.C. §621, et seq. ("ADEA"); 43 P.S. §951, et seq. ("PHRA"), 43 P.S. §260.1 et seq. ("WPCL")

Brief description of cause:
 Plaintiff brings this action for unlawful age discrimination and breach of contract.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ In excess of \$75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

10/06/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jacqueline Joan Ryan

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Wynnewood, PA 19096

Address of Defendant: 16325 Ardrey Kell Road, Suite 400, Charlotte, NC 28277

Place of Accident, Incident or Transaction: _____

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☐ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/6/2020

/s/ Jacqueline Joan Ryan

320640

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ∇ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Jacqueline Joan Ryan, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☒ Relief other than monetary damages is sought.

DATE: 10/6/2020

/s/ Jacqueline Joan Ryan

320640

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Louis N. Marks	:	CIVIL ACTION
	:	
v.	:	
	:	
SPX Corporation and CUES, Inc.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

10/6/2020	/s/Jacqueline Joan Ryan	Louis N. Marks
Date	Attorney-at-law	Attorney for
215.545.7676	215.689.4137	jryan@consolelaw.com
Telephone	FAX Number	E-Mail Address

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

LOUIS N. MARKS
Wynnewood, PA 19096

Plaintiff,

v.

SPX CORPORATION
6325 Ardrey Kell Road, Suite 400
Charlotte, North Carolina 28277

and

CUES, Inc.
3600 Rio Vista Avenue
Orlando, Florida 32805

Defendants.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

Plaintiff, Louis N. Marks, brings this action against his former employers, SPX Corporation (“Defendant SPX”) and CUES, Inc. (“Defendant CUES”) (collectively “Defendants”). Mr. Marks, a then seventy-four (74) year old attorney with decades of experience, was terminated because of his age. Mr. Marks was replaced by a significantly younger employee. After terminating Mr. Marks’ employment, Defendants refused to honor his contractual right to six months severance pay. Defendants’ conduct constitutes a violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. §621, *et seq.* (“ADEA”), the Pennsylvania Human Relations Act, as amended, 43 P.S. §951, *et seq.*

(“PHRA”), the Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1 *et seq.* (“WPCL”), and a breach of contract.

II. PARTIES

1. Plaintiff, Louis N. Marks, is an individual and a citizen of the Commonwealth of Pennsylvania.
2. Plaintiff was seventy-four (74) years old at the time of his termination.
3. Defendant SPX is a Delaware corporation with a principal place of business located at 6325 Ardrey Kell Road, Suite 400, Charlotte, North Carolina 28277.
4. Defendant CUES is a Delaware corporation with a principal place of business located at 3600 Rio Vista Avenue, Orlando, Florida 32805.
5. Defendant CUES is a wholly-owned and controlled subsidiary of Defendant SPX.
6. Defendants are engaged in industries affecting interstate commerce and regularly do business in the Commonwealth of Pennsylvania.
7. Defendants are registered and authorized to do business in the Commonwealth of Pennsylvania, with registered agents located in the Commonwealth of Pennsylvania for service of legal process.
8. Defendant CUES maintains a place of business in Pennsylvania.
9. Defendant CUES is a mere instrumentality of Defendant SPX, as such, Defendants share and exercise control over the work or working conditions of its employees.
10. Defendant SPX is the “alter ego” of its controlled subsidiary Defendant CUES.

11. Defendants are interconnected such that they are considered a “single” and/or “integrated” employer and/or enterprise.

12. Defendants employed, and still currently employ, several individuals in the Commonwealth of Pennsylvania, including Plaintiff who was subjected to, impacted, and harmed by the discriminatory practice and unlawful acts alleged herein and giving rise to this action.

13. Defendant SPX is subject to the personal jurisdiction of this Court because, *inter alia*, the case arises out of or relates to the contacts of SPX with the Commonwealth of Pennsylvania, the contacts of SPX are continuous and systematic such that SPX is at home here, and/or SPX has consented to personal jurisdiction by registering to do business in the Commonwealth of Pennsylvania with a registered agent for service of process.

14. Defendant CUES is subject to the personal jurisdiction of this Court because, *inter alia*, the case arises out of or relates to the contacts of CUES with the Commonwealth of Pennsylvania, the contacts of CUES are continuous and systematic such that CUES is at home here, and/or CUES has consented to personal jurisdiction by registering to do business in the Commonwealth of Pennsylvania with a registered agent for service of process.

15. At all times material hereto, Defendants employed more than twenty (20) employees.

16. At all times material hereto, Defendants acted by and through their authorized agents, servants, workmen, and/or employees acting within the course and scope of their employment with Defendants and in furtherance of Defendants’ business.

17. At all times material hereto, Defendants acted as employers within the

meaning of the statutes which form the basis of this matter.

18. At all times material hereto, Plaintiff was an employee of Defendants within the meaning of the statutes which form the basis of this matter.

III. JURISDICTION AND VENUE

19. The causes of action which form the basis of this matter arise under the ADEA, the PHRA, the WPCL and from a breach of contract.

20. The District Court has jurisdiction over Count I (ADEA) pursuant to 29 U.S.C. §626(c) and 28 U.S.C. §1331.

21. The District Court has jurisdiction over all counts pursuant to 28 U.S.C. § 1332 since the amount in controversy in the present action exceeds the sum or value of seventy five thousand dollars (\$75,000), exclusive of interests and costs, and where there exists complete diversity of citizenship, as Plaintiff is a citizen of the Commonwealth of Pennsylvania and Defendants are not citizens of the Commonwealth of Pennsylvania.

22. The District Court has jurisdiction over Count II (PHRA) pursuant to 28 U.S.C. §1367.

23. The District Court has jurisdiction over Count III (Breach of Contract) pursuant to 28 U.S.C. §1367.

24. The District Court has jurisdiction over Count IV (WPCL) pursuant to 28 U.S.C. §1367.

25. Venue is proper in the District Court under 28 U.S.C. §1391(b).

26. On or about September 27, 2019, Plaintiff filed a Complaint of Discrimination with the Pennsylvania Human Relations Commission ("PHRC"), complaining of acts of discrimination alleged herein. This Complaint was cross-filed with

the Equal Employment Opportunity Commission (“EEOC”). Attached hereto, incorporated herein and marked as Exhibit “1” is a true and correct copy of the PHRC Complaint of Discrimination (with personal identifying information redacted).

27. More than three hundred and sixty-five (365) days have passed from the day Plaintiff filed his Complaint of Discrimination with the PHRC.

28. Therefore, Plaintiff has fully complied with all administrative prerequisites for the commencement of this action.

IV. FACTUAL ALLEGATIONS

29. Plaintiff was hired by Defendant CUES, on or about January 1, 2016 as its Vice President and General Counsel.

30. Prior to being hired by Defendant CUES, Plaintiff worked consistently as outside counsel for Defendant CUES from in or about January 2010.

31. Plaintiff consistently performed his job duties in a highly competent manner and received positive feedback.

32. Plaintiff was born on October 3, 1944. He was seventy-four (74) years old at the time of his termination.

33. Plaintiff worked out of his home office in Wynnewood, Pennsylvania.

34. Plaintiff reported to Alexander Milley (67¹) (“Milley”), President and Chief Executive Officer of Defendant CUES.

35. In or around June 2018, Defendant CUES was purchased by Defendant SPX.

36. To Plaintiff’s knowledge and belief, he was the oldest employee of

¹ All ages herein are to the best of Plaintiff’s knowledge and belief.

Defendant CUES.

37. Defendants SPX and CUES excluded Plaintiff from certain communications and meetings related to his job.

38. Milley told Plaintiff that he wanted to be a witness if and when Defendant SPX terminated Plaintiff's employment because Plaintiff would have "one hell of an age discrimination case."

39. In January 2019, Defendants failed to give Plaintiff a salary increase despite his outstanding performance.

40. Milley apologized to Plaintiff that he was not given a salary increase as other employees with outstanding performance reviews received salary increases.

41. Plaintiff was not given a salary increase because of his age.

42. Milley routinely told Plaintiff that he was performing at an "exceptionally high level" and doing an "outstanding job."

43. On or about July 12, 2019, on a phone call with John Swann ("Swann") (48), President of Weil-McLain, Marley Engineered Products and Radiodetection, and Candie Russell ("Russell") (45), Vice President, Human Resources, Defendants terminated Plaintiff's employment effective immediately.

44. Swann's stated reason for Plaintiff's termination was that his position did not "fit structurally" within the business.

45. Swann stated that Milley was not part of the phone call because Milley disagreed with the decision to terminate Plaintiff's employment.

46. Defendants' stated reason for terminating Plaintiff's employment is pretext.

47. Defendants terminated Plaintiff's employment because of his age.

48. Before the termination meeting, Plaintiff had no indication that his job was in jeopardy or that his employment would be terminated.

49. To the best of Plaintiff's knowledge and belief, he was the only employee at Defendants that was terminated on July 12, 2019.

50. To the best of Plaintiff's knowledge and belief, all other employees of Defendants were retained, all of whom, upon Plaintiff's knowledge and belief, are younger, if not substantially younger, than Plaintiff.

51. Defendant failed to provide Plaintiff with any explanation, including the criteria, as to how his position did not "fit structurally" within Defendants' business and why younger employees were retained.

52. Plaintiff had no opportunity or option to remain employed with Defendants.

53. Plaintiff had no performance or disciplinary issues at any time throughout his employment with Defendants.

54. On or about July 12, 2019, following Plaintiff's termination, on a phone call with Milley, Plaintiff asked Milley what was going on. Milley sounded as though he was very upset and stated that he was concerned about Plaintiff, that he felt "dirty," that he would "take care of [Plaintiff]," and that he was sad that they would not be working together any longer.

55. Milley told Plaintiff that he was against the decision to terminate Plaintiff's employment, that he was not allowed to call Plaintiff to warn him before the termination meeting, and that he was told that Plaintiff would be terminated despite his objection.

56. Milley stated that Plaintiff's termination was disruptive to Defendant CUES, that executives and employees liked and respected Plaintiff and his work, and that

Plaintiff had improved Defendant CUES' business.

57. On July 12, 2019, following Plaintiff's termination, Defendants sent out a letter, signed by John Nurkin (48), Vice President, General Counsel and Secretary of Defendant SPX, entitled "Organizational Announcement – Legal Team," stating the following: "[W]e are making some changes within our Legal function to reflect SPX's legal service operating model. Effective today, John Armstrong (Sr. Business Counsel) will provide legal support for CUES...This change will allow CUES to receive dedicated legal support will also benefitting from the SPX Legal Team's initiatives to streamline processes and leverage best practices across SPX...John will be an asset in assisting CUES. John first joined the SPX Legal Team in August 2017....In the weeks ahead, John will be working with [Alexander] Milley and the CUES team to transition into his expanded role."

58. Defendants replaced Plaintiff with John Armstrong (45), Senior Business Counsel.

59. Plaintiff was more qualified and experienced to perform his job duties than the substantially younger employee with whom Defendants replaced him.

60. After Plaintiff's employment was terminated, Milley told Plaintiff that, in his opinion, Plaintiff had "one hell of an age discrimination case."

61. Plaintiff's age was a motivating and/or determinative factor in connection with Defendants' discriminatory treatment of Plaintiff, including terminating Plaintiff's employment.

62. Defendants have also refused to honor their contract with Plaintiff for six (6) months of severance pay.

63. Plaintiff is entitled to six (6) months of severance because in or about

January or February of 2018, Milley, on behalf of Defendant CUES, informed Plaintiff that in exchange for Plaintiff's continued employment, Plaintiff would receive six (6) months of severance pay in the event that his employment was terminated. Plaintiff accepted this offer.

64. Despite the contract, Defendants have refused to pay Plaintiff severance unless Plaintiff signs a release of claims.

65. The contract between Plaintiff and Defendants does not require Plaintiff to sign a release of claims in order to receive severance pay.

66. At the time of his termination, Plaintiff was making \$300,000 per year.

67. To date, Defendants have not paid Plaintiff \$150,000 for the six (6) months of severance to which he has a contractual right.

68. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, embarrassment, humiliation, loss of self-esteem, mental anguish and loss of life's pleasures, the full extent of which is not known at this time.

69. The conduct of Defendants, as set forth above, was willful and intentional.

70. By failing to pay Plaintiff six (6) months of severance, Defendants breached its contract with Plaintiff and violated the Wage Payment and Collection.

71. Plaintiff has suffered damages as a result of Defendants' breach.

**COUNT I – VIOLATION OF THE AGE DISCRIMINATION
IN EMPLOYMENT ACT**

72. Plaintiff incorporates herein by reference the above paragraphs as if set forth herein in their entirety.

73. By committing the foregoing acts of discrimination against Plaintiff, Defendants have violated the ADEA.

74. Said violations were willful and warrant the imposition of liquidated damages.

75. As a direct and proximate result of Defendants' violation of the ADEA, Plaintiff has suffered the damages and losses set forth herein and has incurred attorney's fees and costs.

76. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendants' discriminatory acts unless and until this Court grants the relief requested herein.

77. No previous application has been made for the relief requested herein.

**COUNT II – VIOLATION OF THE PENNSYLVANIA
HUMAN RELATIONS ACT**

78. Plaintiff incorporates herein by reference the above paragraphs as if set forth herein in their entirety.

79. Defendants, by the above improper and discriminatory acts, have violated the PHRA.

80. As a direct and proximate result of Defendants' violation of the PHRA, Plaintiff has sustained the injuries, damages, and losses set forth herein.

81. Plaintiff has incurred and is entitled to all costs and attorneys' fees incurred as a result of the unlawful behavior complained of herein.

82. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendants' discriminatory acts unless and until this Court grants the relief requested herein.

83. No previous application has been made for the relief requested herein.

COUNT III – BREACH OF CONTRACT

84. Plaintiff incorporates herein by reference the above paragraphs as if set forth herein in their entirety.

85. In consideration for his employment and performance with Defendants, Plaintiff earned the benefit of the full value of the contract for severance.

86. By terminating Plaintiff's employment and failing to pay him the contractually obligated six (6) months of severance, Defendants breached the contract.

87. As a direct and proximate result of Defendants' breach, Plaintiff has suffered the loss of his severance, which remains due to him.

88. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendants' acts unless and until this Court grants the relief requested herein.

89. No previous application has been made for the relief requested herein.

**COUNT IV – VIOLATION OF THE WAGE PAYMENT
AND COLLECTION LAW**

90. Plaintiff incorporates herein by reference the above paragraphs as if set forth herein in their entirety.

91. Plaintiff's severance constitutes earnings and/or wages of an employee as defined by Pa. C.S. §260.1 et seq.

92. In consideration for his employment and performance with Defendants, Plaintiff earned the full value of the contract.

93. Upon Plaintiff's termination, the severance became due and owing within thirty (30) days of the regular payday, but Defendants wrongfully withheld, and continue to withhold, payment.

94. In denying payment of the severance to Plaintiff, Defendants have violated the Wage Payment and Collection Law, and that sum is due and owing.

95. There is no good faith dispute that the severance is owed to Plaintiff.

96. Plaintiff is entitled to recover liquidated damages against Defendants under Section 260.10 of the Wage Payment and Collection Law.

97. In addition, Plaintiff is entitled to recover reasonable attorneys' fees and costs as a result of Defendants' violation of the Wage Payment and Collection law.

98. No previous application has been made for the relief requested herein.

RELIEF

WHEREFORE, Plaintiff seeks damages and legal and equitable relief in connection with Defendants' improper conduct, and specifically prays that the Court grant the following relief to the Plaintiff by:

(a) declaring the acts and practices complained of herein to be in violation of the ADEA;

(b) declaring the acts and practices complained of herein to be in violation of the PHRA;

(c) declaring the acts and practices complained of herein to be in breach of contract;

(d) declaring the acts and practices complained of herein to be in violation of the WPCL;

(e) enjoining and permanently restraining the violations alleged herein;

(f) entering judgment against the Defendants and in favor of the Plaintiff in an amount to be determined;

(g) awarding compensatory damages to make the Plaintiff whole for all lost earnings, earning capacity and benefits, past and future, which Plaintiff has suffered or may suffer as a result of Defendants' improper conduct;

(h) awarding compensatory damages to Plaintiff for past and future pain and suffering, emotional upset, mental anguish, humiliation, and loss of life's pleasures, which Plaintiff has suffered or may suffer as a result of Defendants' improper conduct;

(i) awarding liquidated damages to Plaintiff under the ADEA and WPCL;

(j) awarding damages to Plaintiff as a result of Defendants' breach of contract;

(k) awarding Plaintiff such other damages as are appropriate under the ADEA, PHRA, and WPCL;

(l) awarding Plaintiff the costs of suit, expert fees and other disbursements, and attorneys' fees; and,

(m) granting such other and further relief as this Court may deem just, proper, or equitable including other equitable and injunctive relief providing restitution for past violations and preventing future violations.

CONSOLE MATTIACCI LAW LLC

Dated: October 01, 2020

BY: /s/Jacqueline Joan Ryan
Stephen G. Console, Esq. (36656)
Laura C. Mattiacci, Esq. (89643)
Jacqueline Joan Ryan, Esq. (320640)
1525 Locust Street, 9th Floor
Philadelphia, PA 19102
(215) 545-7676

*Attorneys for Plaintiff,
Louis N. Marks*

EXHIBIT 1

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

COMPLAINT

<hr/>		:
COMPLAINANT:		:
		:
LOUIS N. MARKS		:
		:
v.		:
		:
RESPONDENTS:		:
		:
SPX CORPORATION		:
		:
and		:
		:
CUES, INC.		:
		:
and		:
		:
JOHN SWANN, aider and abettor		:
		:
and		:
		:
CANDIE RUSSELL, aider and abettor		:
<hr/>		:

Docket No.

1. The Complainant herein is:

Name: Louis N. Marks

Address: 

2. The Respondents herein are:

Name: SPX Corporation ("Respondent SPX"); CUES, Inc. ("Respondent CUES"); John Swann ("Respondent Swann"), aider and abettor; Candie Russell ("Respondent Russell")

Address of Respondent SPX: 133220-A Ballantyne Corporate Place
Charlotte, NC 28277

Address of Respondent CUES: 3600 Rio Vista Avenue
Orlando FL, 32805

3. I, Louis N. Marks, the Complainant herein, allege that I was subjected to unlawful discrimination because of my age (74) as set forth below.

Discrimination

A. I specifically allege:

[1] I was hired by Respondent CUES as Vice President and General Counsel on or about January 1, 2016.

[2] Prior to being hired by Respondent CUES, I worked as outside counsel for Respondent CUES since in or about January 2010.

[3] I consistently performed my job duties in a highly competent manner, and received positive feedback.

[4] I am age seventy-four (74), and my birth date is October 3, 1944.

[5] I worked out of my home office in Wynnewood, Pennsylvania.

[6] I held the position of Vice President and General Counsel of Respondent CUES.

[7] I reported to Alexander Milley (67¹), President and Chief Executive Officer of Respondent CUES. To my knowledge and belief, Milley reported to Respondent John Swann (48), President of Weil-McLain, Marley Engineered Products and Radiodetection of Respondent SPX.

[8] In or about June 2018, Respondent CUES was purchased by Respondent SPX.

¹ All ages herein are approximations.

[9] To my knowledge and belief, I was the oldest employee at Respondent SPX and Respondent CUES.

[10] Respondent SPX and Respondent CUES excluded me from certain communications and meetings related to my job duties.

[11] Milley told me that he wanted to be a witness if and when Respondent SPX terminated my employment because I would have “one hell of an age discrimination case.”

[12] In January 2019, Respondent SPX and Respondent CUES failed to give me a salary increase despite my outstanding performance review. Milley apologized to me that I was not given a salary increase, as the majority of other employees, particularly those with outstanding performance reviews, received a salary increase.

[13] I was not given a salary increase because of my age.

[14] Milley routinely told me that I was performing at an “exceptionally high level” and doing an “outstanding job.”

[15] On July 12, 2019, in a phone call with Respondent Swann and Respondent Candie Russell (45), Vice President, Human Resources, my employment was terminated, effective immediately. I was blindsided. The stated reason was that my position did not “fit structurally” within the business. Respondent Swann stated that Milley was not part of the phone call because he disagreed with the decision to terminate my employment.

[16] Respondents’ stated reason for my termination is pretext.

[17] Respondents terminated my employment because of my age.

[18] Before the termination meeting, I had no indication that my job was in jeopardy or my employment would be terminated.

[19] To my knowledge and belief, I was the only employees at Respondent CUES and Respondent SPX that was terminated on July 12, 2019.

[20] To my knowledge and belief, all other employees at Respondent CUES and Respondent SPX were retained, all of whom, to my knowledge and belief, are younger, if not substantially younger, than me.

[21] Respondents failed to provide me with any explanation, including the criteria, as to how my position did not “fit structurally” within Respondent CUES’ and Respondent SPX’s business and why younger employees were retained.

[22] I had no opportunity or option to remain employed with Respondent CUES and/or Respondent SPX.

[23] I had no performance or disciplinary issues at any time throughout my employment with Respondent CUES and/or Respondent SPX.

[24] On July 12, 2019, following my termination, in a phone call with Milley. I asked him what was going on. Milley sounded as though he was almost in tears, and stated that he was concerned about me, that he felt “dirty,” that he would “take care of [me],” and that he was sad that we would not be working together any longer. Milley told me that he was against the decision to terminate my employment, that he was not allowed to call me to warn me before the termination meeting, and that he was told that I would be terminated despite his objection. Milley stated that my termination was disruptive to Respondent CUES, that executives and employees liked and respected me and my work, and that I had improved Respondent CUES’ business.

[25] On July 12, 2019, following my termination, Respondents sent out a letter, signed by John Nurkin (48), Vice President, General Counsel and Secretary of Respondent SPX,

entitled “Organizational Announcement – Legal Team,” stating the following: “[W]e are making some changes within our Legal function to reflect SPX’s legal service operating model. Effective today, John Armstrong (Sr. Business Counsel) will provide legal support for CUES This change will allow CUES to receive dedicated legal support while also benefitting from the SPX Legal Team’s initiatives to streamline processes and leverage best practices across SPX. . . . John will be an asset in assisting CUES. John first joined the SPX Legal Team in August 2017 In the weeks ahead, John will be working with [Alexander] Milley and the CUES team to transition into his expanded role.”

[26] Respondents replaced me with John Armstrong (45), Senior Business Counsel. I was more qualified and experienced to perform my job duties than the substantially younger employee with whom Respondents replaced me.

[27] After my employment was terminated, Milley told me that, in his opinion, I had “one hell of an age discrimination case.”

[28] Respondents discriminated against me based on my age in terminating my employment.

[29] Respondent Swann aided and abetted Respondent SPX and Respondent CUES in discriminating against me based on my age.

[30] Respondent Russell aided and abetted Respondent SPX and Respondent CUES in discriminating against me based on my age.

B. Based on the aforementioned, I allege that Respondents have discriminated against me because of my age (74), in violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 623 *et seq.* (“ADEA”), and the Pennsylvania Human Relations Act, as

amended, 43 P.S. § 951, *et seq.* (“PHRA”), and the Philadelphia Fair Practices Ordinance, Phila. Code § 9-1101, *et seq.* (“PFPO”).

4. The allegations in Paragraph 3 hereof constitute unlawful discriminatory practices in violation of:

 X **Pennsylvania Human Relations Act (Act of October 27, 1955, P.L.**

744, as amended) Section 5 Subsection(s): (a)

 Section 5.1 Subsection(s) _____

 Section 5.2 Subsection(s) _____

 Pennsylvania Fair Educational Opportunities Act (Act of July 17, 1961, P.L. 766, as amended) Section 4 Subsection(s) _____

5. Other action based upon the aforesaid allegations has been instituted by the Complainant in any court or before any other commission within the Commonwealth of Pennsylvania as follows:

 X **This charge will be referred to the EEOC for the purpose of dual filing.**

6. The Complainant prays that Respondents be required to:

(a) Make the Complainant whole.

(b) Eliminate all unlawful discriminatory practice(s) and procedure(s).


(c) Remedy the discriminatory effect of past practice(s) and procedure(s).

(d) Take further affirmative action necessary and appropriate to remedy the violation complained of herein.

(e) Provide such further relief as the Commission deems necessary and appropriate.

VERIFICATION

I hereby verify that the statements contained in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 P.A.C.A. Section 4904, relating to unsworn falsification to authorities.

<u>September 26, 2019</u>	<u></u>
(Date Signed)	(Signature)
	Louis N. Marks 404 Wynmere Road Wynnewood, PA 19096